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6 WIND PUMP POWER, LLC  
6 SUNFLOWER WIND, LLC  
7 DAN RASURE

8 UNITED STATES DISTRICT COURT

9 DISTRICT OF NEVADA

10 \* \* \* \* \*

11 NEVADA CONTROLS, LLC, a Nevada ) Case No. 3-12-cv-00068-HDM-VPC  
12 Limited Liability Company, )  
13 Plaintiff, )  
14 v. ) **MOTION FOR CONTINUANCE OF**  
15 WIND PUMP POWER, LLC, a Kansas ) **HEARING**  
16 Limited Liability Company, SUNFLOWER )  
17 WIND, LLC, a Kansas Limited Liability )  
17 Company; DAN RASURE, an individual, )  
18 Defendants. )  
19 )  
20 WIND PUMP POWER, LLC, a Kansas )  
20 Limited Liability Company, )  
21 Counterclaimant, )  
22 )  
23 v. )  
24 NEVADA CONTROLS, LLC, a Nevada )  
24 Limited Liability Company, )  
25 Counterdefendant. )  
26 )  
27 )

27 COME NOW, Defendant/Counterclaimant, WIND PUMP POWER, LLC, and  
28 Defendants, SUNFLOWER WIND, LLC, and DAN RASURE (hereinafter referred to

1 collectively as "Defendants"), by and through their special attorney or record, MARK A.  
2 GOODMAN, ESQ., of GOODMAN LAW CENTER, P.C., and hereby move the Court for  
3 an Order continuing the Hearing on the Motion to Strike and Request for Entry of Default  
4 Against Defendants WIND PUMP POWER, LLC, and SUNFLOWER WIND, LLC  
5 (Docket No. 28), filed July 13, 2012, by Plaintiff/Counterdefendant, NEVADA  
6 CONTROLS, LLC (hereinafter referred to as "Plaintiff"), which currently is scheduled at  
7 9:30 a.m. on November 6, 2012 (Docket No. 32).

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9 This Motion is made upon the ground that Mr. Goodman will be out of the country  
10 for a regularly scheduled vacation from October 26, 2012, to November 9, 2012, and is  
11 based upon the Points and Authorities submitted herewith, and upon all of the pleading,  
12 papers, and documents on file herein.

13  
14 DATED: Friday, October 26, 2012.  
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16 GOODMAN LAW CENTER  
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18 /s/MARK A. GOODMAN, ESQ.  
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## **BRIEF STATEMENT OF FACTS**

On July 13, 2012, Plaintiff filed its Motion to Strike (Docket No. 28).

On August 7, 2012, the Court entered its Minute Order in Chambers, setting Plaintiff's Motion to Strike for Hearing at 10:30 a.m. on Thursday, August 23, 2012 (Docket No. 30).

On August 20, 2012, the Court entered its Minute Order in Chambers, ordering that Plaintiff's Motion to Strike, set for 10:30 a.m. on Thursday, August 23, 2012, should be conducted telephonically before the Court, and that all parties should appear telephonically.

On August 23, 2012, a telephonic Hearing was conducted before the Court, at which time the Court ordered that Plaintiff's Motion to Strike would be reset for Hearing at 9:30 a.m. on Tuesday, November 6, 2012, and that the Hearing would go forward on that date whether Defendant, DAN RASURE ("Mr. Rasure"), had secured counsel or not.

## **POINTS AND AUTHORITIES**

I

THE COURT SHOULD GRANT DEFENDANTS A BRIEF  
CONTINUANCE, IN ORDER TO ALLOW MR. GOODMAN TIME TO OPPOSE  
PLAINTIFF'S MOTION TO STRIKE.

The decision to grant or deny a requested continuance lies within the broad discretion of the district court, and will not be disturbed on appeal absent clear abuse of that discretion. The Ninth Circuit structures its review in accordance with four salient factors that appellate courts have considered when reviewing denials of requests for continuances. First, the Court considers the extent of appellant's diligence in his efforts to ready his defense prior to the date set for hearing. Second, the Court considers how likely

1 it is that the need for a continuance could have been met if the continuance had been  
2 granted. Third, the Court considers the extent to which granting the continuance would  
3 have inconvenienced the court and the opposing party, including its witnesses. Finally, the  
4 Court considers the extent to which the appellant might have suffered harm as a result of  
5 the district court's denial. *See, United States v. Flynt*, 756 F.2d 1352, 1358-59 (9th Cir.  
6 1985).

7  
8 In the present case, Mr. Rasure has made diligent efforts to retain counsel for  
9 Defendants in the State of Nevada, but he nevertheless has experienced considerable  
10 difficulty in doing so. Mr. Goodman now has made a special appearance for the limited  
11 purpose of opposing Plaintiff's Motion to Strike, which currently is scheduled to be heard  
12 at 9:30 a.m. on November 6, 2012 (Docket No. 32). Unfortunately, Mr. Goodman will be  
13 out of the country for a regularly scheduled vacation from October 26, 2012, to November  
14 9, 2012. If the continuance is granted, then Defendants will be able to oppose Plaintiff's  
15 Motion to Strike, and the need for the continuance will have been met. Obviously, the  
16 prior delay in obtaining counsel already has inconvenienced both the Court and opposing  
17 counsel; however, a brief continuance for the purpose of allowing Mr. Goodman to oppose  
18 Plaintiff's Motion to Strike clearly would be in the interest of justice, particularly where, as  
19 here, Defendants would suffer the ultimate prejudice and harm, by having their  
20 counterclaim stricken and by having defaults entered against them, if the Court were to  
21 deny Defendants' Motion for a continuance. *See, United States v. Flynt, supra*, 756 F.2d at  
22 1358-59. Although Mr. Goodman in good faith requested a brief continuance from  
23 Plaintiff's counsel, Leigh Goddard, Esq., prior to filing the instant Motion for Continuance  
24 of Hearing, Ms. Goddard denied Mr. Goodman's request.

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## **CONCLUSION**

For all of the above-stated reasons, the Court should grant Defendants a brief continuance, in order that Mr. Goodman time to oppose Plaintiff's Motion to Strike.

DATED: Friday, October 26, 2012.

GOODMAN LAW CENTER

/s/MARK A. GOODMAN, ESQ.

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Attorney for Defendants/Counterclaimants  
WIND PUMP POWER, LLC  
SUNFLOWER WIND, LLC  
DAN RASURE

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an agent of GOODMAN LAW CENTER, P.C., and that I caused a true and correct copy of **MOTION FOR CONTINUANCE OF HEARING** to be served by:

[ x ] (BY MAIL) on all parties in said action, by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. At the Law Offices of Goodman Law Center, P.C., mail placed in that designated area is given the correct amount of postage and is deposited that same date in the ordinary course of business, in a United States mailbox in the City of Reno, County of Washoe, Nevada.

[ ] (BY PERSONAL DELIVERY) by causing a true copy thereof to be hand delivered this date to the addressee(s) at the address(es) set forth below.

[ ] (BY FACSIMILE) on the parties in said action by causing a true copy thereof to be telecopied to the number indicated after the address(es) noted below.

[ ] Federal Express or other overnight delivery

[ ] Reno/Carson Messenger Service

addressed, as follows:

Leigh Goddard, Esq.  
Jessica Woelfel, Esq.  
McDonald Carano Wilson LLP  
100 West Liberty Street, 10th Floor  
Post Office Box 2670  
Reno, Nevada 89505-2670

DATED: Friday, October 26, 2012.

/s/ Paula Rodriguez

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**PAULA RODRIGUEZ, CLA**  
Legal Assistant to Mr. Goodman